Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

LAWRENCE LITTEN — PETITIONER

VS.

GRENADA COUNTY,MISSISSIPPI,ET. AL. — RESPONDENT

SUPREME COURT CAUSE NO. _____

FLETCHER FLY — PETITIONER

VS.

YALOBUSHA COUNTY, MISSISSIPPI — RESPONDENT

APPENDIX

PREPARED AND SUBMITTED BY:
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TABLE OF CONTENTS

TABLE OF CONTENTS 2

FIFTH CIRCUIT OPINION 3
JUDGMENT 7

DISTRICT COURT-LITTEN

SUMMARY JUDGMENT 8
JUDGMENT 15
RULE 59 ORDER 16

DISTRICT COURT-FLY

SUMMARY JUDGMENT 17
RULE 59 ORDER 20

STATE CODE-MISS. CODE ANN. 1972

M.C.A. 65-7-4 26
M.C.A. 65-7-4.1 29
M.C.A. 65-7-71 30

FEDERAL LAW

AMENDMENT 5 31
AMENDMENT 14 32

CHART-FLY ROAD 33

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 09-60463
SUMMARY CALENDAR

LAWRENCE LITTEN,
PLAINTIFF-APPELLANT,

Versus

GRENADA COUNTY, MISSISSIPPI;
MICHAEL LOTT, In his official and personal capacities,

DEFENDANT-APPELLEES.

****

NO. 09-60502
SUMMARY CALENDAR

FLETCHER FLY
Plaintiff-Appellant,

Versus

YALOBUSHA COUNTY, MISSISSIPPI,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
NO. 3:07-CV-91

Before DAVIS, SMITH, and DENNIS,
Circuit Judges.

PER CURIAM:

Lawrence Litten and Fletcher Fly appeal a summary judgment dismissing their physical takings claims for lack of ripeness. The two cases in this consolidated appeal have no mutual parties or shared factual circumstances, yet both present the threshold issue of whether the ripeness requirement in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), applies to claims of physical takings. We recently held that it does. See *Severance v. Patterson*, 566 F.3d 490, 496-97 (5th Cir.2009)(citing *Urban Developers LLC v. City of Jackson, Miss.*, 468 F.3d 281, 294-95 (5th Cir. 2006)). The district court therefore properly dismissed both claims as unripe, and we AFFIRM.

I.

The district court held that Litten and Fly had not sought or been denied just compensation, under available state procedures, for the alleged takings. Citing *Williamson*, the court held plaintiffs' claims to be unripe. Litten and Fly argue that *Williamson's* ripeness rule applies only[1] to regulatory takings and is inapplicable to their case. They recognize that our holding in *Severance* directly contradicts their assertion,, but they argue that it was wrongly decided. That argument is foreclosed, because "one panel of this court cannot overrule the decision of another panel." *Lowrey v. Tex. A&M Univ.* Sys., 117 F.3d 242, 247 (5th Cir. 1997).

Fly further asserts that the alleged takings violate the Public Use Clause. As an initial matter, a taking has not been established in either case. Even if we were to assume a taking, there has been no violation of the Public Use Clause. The land at issue is either a public road or the adjoining cartilage or right of way. "A taking of property for a highway is a taking for public use [that]has been universally recognized, from time immemorial." *Rindge Co. v. Los Angeles County*, 262 U.S. 700, 706 (1923). The public road and cartilage contain a water line and utility lines. Utility companies use the road to service and repair the transmission lines. The water and utility lines serve Fly's neighbors. A taking of property for public utility

[1] Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

and water lines, like public highways, unquestionably satisfies the public use requirement of the Takings Clause.

There remain disputed issues of fact, but none is material. Fly argues that a part of the public road adjoining his property washed out several years age, that the county neglected to repair it, and that the property was therefore abandoned and reverted to him. But until there is a denial of just compensation, there is no takings claim. *Williamson*, 473 U.S. at 195. Because plaintiffs' claims are unripe, we cannot address their substance.

Accordingly, the summary judgments, dismissing plaintiffs' claim for lack of ripeness, are AFFIRMED. We also AFFIRM the summary judgment as to Fly's private takings claim. All pending motions are DENIED. [2]

[2] Appellants' motion to strike the name of Honorable Thomas U. Reynolds from the response brief of Yalobusha County as an interested person is DENIED. Appellants' motions for sanctions against attorney John J. Crow, Jr., and for award of attorney fees are DENIED. Appellee Yalobusha County's motion for attorney fees and the motion for disciplinary action against R. Stewart Guernsey are also DENIED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 09-60502
Summary Calendar

D.C. Docket No. 3:08-CV-8

FLETCHER FLY,
Plaintiff-Appellant

v.

YALOBUSHA COUNTY, MISSISSIPPI,
Defendant-Appellee

Appeal from the United States District Court for the Northern District of Mississippi, Oxford

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee the costs on appeal to be taxed by the Clerk of this court.

ISSUED AS MANDATE:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LAWRENCE LITTEN PLAINTIFF

v. CIVIL ACTION NO. 3:07CV91

GRENADA COUNTY, MISSISSIPPI, MICHAEL LOTT, In His Official and Individual Capacities And JOHN DOES, 1-5 DEFENDANTS

ORDER

This cause comes before the court on the motion of defendants Grenada County and Michael Lott for summary judgment, pursuant to Fed. R. Civ. P. 56. Plaintiff Lawrence Litten has responded in opposition to the motion, and the court, having considered the memoranda and submissions of the parties, concludes that the motion is well taken and should be granted.

On July 17, 2007, plaintiff filed this action against defendants Grenada County, Mississippi, and Michael Lott, alleging that his rights were violated in relation to the public use of Hebron Church Road, which runs through portions of his land. In particular, plaintiff complains of defendants' actions in having allegedly removed an electric fence adjacent to the road, which plaintiff claims resulted in deer eating his muscadine crop. Prior to filing the instant action, plaintiff filed suit in the Circuit Court of Grenada County, making essentially the same allegation as he makes here. The circuit court dismissed the action on May 8,

2007, although it later clarified that the dismissal was without prejudice to plaintiff bringing a subsequent inverse condemnation claim.

In light of the circuit court's ruling, it seems clear (as this court has noted in a prior order) that the sole claims which are properly before it are plaintiff's inverse condemnation claims. In opposing summary judgment, plaintiff appears to concede that this is the case, although he does assert at one point that his trespass claims are properly before this court. Even if this court were to accept this assertion as true, the parties here are all Mississippi residents, and trespass claims clearly do not arise under federal law. Thus, the sole basis for federal jurisdiction in this case are plaintiff's federal inverse condemnation claims, and, as explained below, these claims are not yet ripe.

While inverse condemnation claims may be brought under either state or federal law, the U.W. Supreme Court emphasized in *Williamson County Reg'1 planning Comm'n v. Hamilton bank of Johnson City*, 473 U.S. 172, 105 S.Ct. 3108, 3119, 87 L.Ed.2d 126 (1985), that a federal takings claim does not ripen until just compensation is denied. Therefore, for a federal takings claim to become ripe, the plaintiff is required to seek compensation through the procedures the state has provided, unless those procedures are unavailable or inadequate. *Id, at 3120-22.* See also *Samaad v. City of Dallas*, 940 F.2d 925, 933 (5th Cir. 1991); *Coleman v. Carroll County*, 2005 WL 2133678 (N.D. Miss.2005). In *Liberty Mut. Ins. Co. v. Brown*, 380 f.3d 793, 798 (5th Cir.2004), the Fifth Circuit held that where a plaintiff "failed to present its inverse condemnation action to the state court in a pos-

ture such that the state court could rule on the merits of [its] claim, [it] had failed to utilize the available state procedures for obtaining compensation" within the meaning of *Williamson*. In this case, plaintiff did, to reiterate, file a state court complaint asserting inverse condemnation claims, but he obtained no actual ruling from the circuit court regarding the merits of those claims.

The record indicates that the circuit court issued two cursory orders dismissing plaintiff's state court complaint, but neither order addressed the merits of his claims. The first order, issued on May 8, 2007, merely noted that Grenada County had filed a motion to dismiss and that plaintiff had failed to attend a hearing related to that motion. The circuit court thus appeared to grant the motion to dismiss as unopposed. The circuit court's second order of dismissal, dated July 27, 2007, clarified the first order and emphasized that the action was dismissed "without prejudice to be brought again as an Inverse Condemnation proceeding only." At the time this second order was entered, plaintiff had already filed the instant federal court action ten days previously, but, even if he had not, it would still be apparent that he had not obtained a ruling on the merits of his inverse condemnation claim within the meaning of *Brown and Williamson*. It is thus apparent that any federal inverse condemnation claims which plaintiff might have are not yet ripe.

This court's conclusion in this regard is strengthened by the 2005 decision of *Oliver v. Lafayette County, Miss.*, 2005 WL 1657134 (N.D.Miss.2005), where Judge Davidson concluded that a plaintiff had failed to exhaust his remedies where he was still involved in

state court litigation at the time he had filed his federal inverse condemnation action. In so concluding, Judge Davidson wrote as follows:

> The Mississippi Supreme Court, in *Runge v. Necaise Constr. Co., Inc.*, 467 So.2d 666 (Miss.1985), held that property owners asserting inverse condemnation claims are to use the following procedure in asserting their claims in the state courts of Mississippi: first, in cases where a county is the responsible authority (as is asserted here), a petition for compensation is to be filed with the county Board of Supervisors pursuant to Section 65-7-61 of the Mississippi Code. Failure to file such a petition, however, is not fatal to a landowner's claim, and such claims can be presented through an action in state circuit court, which is the second and final step in the procedure. *Runge*, 467 So.2d 666 at 668-69.
>
> In the case sub judice, the Plaintiff makes no credible argument that the State of Mississippi's just compensation procedures are unavailable or inadequate. Regarding those procedures, the Plaintiff did not file a petition for compensation with the Lafayette County Board of Supervisors; he has, however, filed a pending state court action against the University of Mississippi and the State of Mississippi. As the Fifth Circuit made clear in *Vulcan Materials*, the requirement for a landowner to exhaust his state court remedies before filing a federal suit cannot be satisfied "by simultaneously bring[ing] federal and state takings claims" as

> the Plaintiff has done here. Vulcan Materials, 238 F.3d at 385. Instead, the Plaintiff is to first exhaust his state court remedies and then, if additional relief is ought, bring a federal court action. Here the Plaintiff has not properly exhausted his state court remedies and is still involved in state court litigation; thus, this action was filed prematurely and is properly dismissed in accordance with the Fifth Circuit's Vulcan Materials ruling.

Oliver, slip op. at 3.

In this case, plaintiff as likewise failed to exhaust his state court remedies by merely filing a state court complaint without obtaining an actual ruling on the merits of that claim. Indeed, defendants note that plaintiff had previously failed to pursue his state court remedies by failing to challenge the identification of Hebron Church Road on Grenada County's registry of public roads in 2000. Part of plaintiff's complaint in this case is that Hebron Church Road not actually a public road, but it is apparent that he failed to timely challenge the county's designation of the road as such. It is thus apparent that plaintiff failed to timely challenge the county's actions in this case, and, when he finally filed a circuit court action, he failed to obtain a ruling on the merits of his claim. Plaintiff asserted in his response to defendant's initial motion to dismiss that he acquiesced in the circuit court's July 27, 2007 order of dismissal because he "saw no harm in dismissing the state case" since jurisdiction was by that time "firmly vested" in federal court. Plaintiff fails to recognize, however, that his federal inverse condemnation/taking claim is the only jurisdictional basis for

this case being brought in federal court and that, by failing to first pursue his remedies in state court, he failed to lay the proper jurisdictional predicate for this action. This action is therefore due to be dismissed as unripe.

It is therefore ordered that defendants' motion for summary judgment is granted, and this action is hereby dismissed without prejudice.

A separate judgment will be issued this date, pursuant to Fed. R. Vic. P. 58. So ordered, this the 14th day of November, 2008.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT
COURT NORTHERN DISTRICT
OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LAWRENCE LITTEN PLAINTIFF

v. CIVIL ACTION NO.3:07CV91

GRENADA COUNTY, MISSISSIPPI, MICHAEL LOTT, In His Official and Individual Capacities and JOHN DOES, 1-5 DEFENDANTS

JUDGMENT

For the reasons given in the court's order issued this date, it is hereby ordered that this case is dismissed without prejudice.

So ordered, this the 14th day of November, 2008.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT
COURT NORTHERN DISTRICT
OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

LAWRENCE LITTEN — PLAINTIFF

VS. — CIVIL ACTION NO. 3:07-CV91

GRENADA COUNTY, MISSISSIPPI, MICHAEL LOTT, in His Official Capacities and JOHN DOES 1-5 — DEFENDANTS

ORDER

Plaintiff's motion to reconsider will be denied. As this court noted in its order granting summary judgment, the Fifth circuit and Mississippi district courts have held that the Supreme Court's decision in *Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 105 S.Ct. 3108, 3119, 87 L.Ed.2d 126 (`1985) is applicable to inverse condemnation actions such as the instant one. *See, e.g. Liberty Mut. Ins. Co. V. Brown,* 380 F.3d, 793, 798, (5th Cir. 2004); Oliver v. Lafayette County, Miss., 2005 WL 1657134 (N.D. Miss. 2005). Moreover, plaintiff's argument that he did not need to first file the instant action in state court is belied by his own actions in initially doing so. The record reveals that plaintiff failed to appear at a summary judgment hearing in state court relating to his claim, and he should not be permitted to assert federal Constitutional claims when he failed to take advantage of the state court

remedies which were available to him.

If federal jurisdiction in the present context were as broad as plaintiff suggests, then it is likely that federal courts in this state would be inundated with property disputed between Mississippi residents and municipalities. This case is, in fact, a simple property dispute between a Mississippi resident and county, and Mississippi law provides plaintiff with a clear avenue for seeking compensation in this matter. It appears that plaintiff essentially gave up on pursuing this compensation in state court, and having done so, he is in no position to assert that he has been deprived of his rights under the U. S. Constitution.

It is therefore ordered that plaintiff's motion to reconsider is denied.

So ordered, this the 18th day of May, 2009.

/s/ MICHAEL P. MILLS
UNITED STATES DISTRICT
COURT NORTHERN
DISTRICT OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FLETCHER FLY — PLAINTIFF

V. — CASE NO. 3:08CV8

YALOBUSHA COUNTY, MISSISSIPPI

ORDER GRANTING SUMMARY JUDGMENT

This cause comes before the court on the motion [29] of the defendant, Yalobusha County, Mississippi, seeking summary judgment.

The plaintiff, Fletcher Fly, alleges a variety of complex facts and claims in this suit. Each o these claims relates to an alleged taking of Fly's property by the county.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Cantrett, 477 U.S. 317, 323, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). An issue of material fact is genuine if a reasonable jury could return a verdict for the nonmovant. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). In reviewing the evidence, this Court must draw all reasonable inferences in favor of the nonmoving par-

ty, and avoid credibility determinations and weighing of the evidence. Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 2110, 147 L.Ed.2d 105 (2000). In so doing, the Court must disregard all evidence favorabled to the moving party that the jury is not required to believe. Reeves, 530 U.S. at 151, 120 S.Ct. at 2110.

"[A] violation of the Takings Clause does not occur until just compensation is denied." Urban Developers LLC v. City of Jackson, Mississippi, 468 F.3d 281, 294)5th Cir. 2006). This requirement means plaintiffs must first avail themselves of the state's administrative procedures before bringing a takings claim to federal court. Id. At 294-95 (citing Williamson County Regional Planning Com'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 173 (1985)).

The court in reaching its decision addresses only Fly's failure to pursue the procedures regarding takings available under Mississippi law. In 2007, Fly went before the Yalobusha County Board of Supervisors. The Board found there had been no taking of Fly's property. Mississippi law allows such a decision to be appealed to the Circuit Court. Miss. Code Ann. §11-51-75. Fly did not appeal the decision to the Circuit court. Neither did Fly bring a state law inverse-condemnation action. See Urban Developers, 468 F.3d at 295 (citing City of Gulfport v. Anderson, 554 So.2d 873, 874 (Miss. 1989). Likewise, Fly has not alleged the state law procedures are unavailable or inadequate as required under Fifth Circuit precedent. Id. (*Citing Bryan v. City of Madison, Mississippi*, 213 F.3d 267,276 n.16 (5th Cir. 2000)).

In order to ripen his claim Fly must exhaust all remedies provided for under Mississippi law. His failure to do so makes this suit premature.

The defendant's motion for summary judgment is GRANTED.

This the 19th day of February, 2009.

/s/ MICHAEL P. MILLS
CHIEF JUDGE UNITED STATES
DISTRICT COURT NORTHERN
DISTRICT OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

FLETCHER FLY PLAINTIFF

V. CASE NO. 3:08CV8

YALOBUSHA COUNTY, MISSISSIPPI DEFENDANT

ORDER

This cause comes before the court on the motion [43] of the plaintiff, Fletcher Fly, to alter the court's prior entry of summary judgment.

This suit arises out of Fly's complaint that 300 yards of his property have been "invaded" by the defendant, Yalobusha County, Mississippi. It is undisputed that the property in question became a county road sometime before the early 1950's.[1] Fly came into possession of the land surrounding the road in 1994, subject to his mother's life state. At some point between when the road initially took on a public character and Fly's possession of the surrounding land, a portion of the road washed out. The County then stopped maintaining the road for a period of time. There is a dispute between the parties as to whether the wash out took place within Fly's property.

[1] The County argues this date although at least some testimony indicates the road was public as early as the 1800's.

Yalobusha County gave notice of intent to adopt an official road plan, advertising in the North Mississippi Herald and Coffeeville Courier, announcing a public hearing for June 12, 2000, all pursuant to MISS. CODE ANN. § 65-7-4 . No interested members of the public attended.1 Yalobusha County then adopted the road register and official map formally setting out all county roads. That plan lists the property in question as County Road 161, though in older times it had been known as Henry Hudson Road, and sometimes was known as Chestnut Lake Road. Bowing to modern day notions of presumed efficiency, a sign designating it as "CR 161" was erected. Thus began the present dispute.

County Road 161 runs across the Fly property and accesses properties owned by the La Gasse family, David LaGasse individually, and a collection of folk known as the Magee Hunting Club. Utility lines, serving these properties, also run along the road.

Fly asks the court to reconsider its order closing the case because he brought a claim, not previously considered, that the County taking was for private use and thus prohibited by the Fifth Amendment. This claim is based on the assertion that the County abandoned the road through his property and he came into possession of that land. He then further asserts the County took the land by including it in the 2000 road plan.

Under Federal Rules of Civil Procedure 59(e), there are three possible grounds for granting a motion for altering a court's judgment: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, and (3) the need to correct a clear error of law or prevent manifest injustice. *Atkins v. Marathon LeTourneau Co.*, 130F.R.D.

625, 626 (S.D. Miss. 1990).

The court finds that Fly has stated a ripe claim that the County took the road for private use. See Samaad v. City of Dallas, 940 F.2d 925 (5th Cir. 1991). This court erred as a matter of law by not considering the "taking for private use' claim. The court will thus reconsider the remaining arguments made in Yalobusha County's original motion for summary judgment.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. V. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). An issue of material fact is genuine if a reasonable jury count return a verdict for the non movant. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). In reviewing the evidence, this Court must draw all reasonable inferences in favor of the nonmoving party, and avoid credibility determinations and weighing of the evidence. Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133,150. 120 S.Ct. at 2110, 147 L.Ed.2d 105 (2000). In so doing, the Court must disregard all evidence favorable to the moving party that the jury is not required to believe. Reeves. 530 U.S. at 151, 120 S.Ct. At 2110.

Yalobusha County argues (1) it did not "take" the road, because the road already belonged to the County; (2) any taking was for public use; and (3) the

625, 626 (S.D. Miss. 1990).

The court finds that Fly has stated a ripe claim that the County took the road for private use. See Samaad v. City of Dallas, 940 F.2d 925 (5th Cir. 1991). This court erred as a matter of law by not considering the "taking for private use' claim. The court will thus reconsider the remaining arguments made in Yalobusha County's original motion for summary judgment.

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. V. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). An issue of material fact is genuine if a reasonable jury count return a verdict for the non movant. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). In reviewing the evidence, this Court must draw all reasonable inferences in favor of the nonmoving party, and avoid credibility determinations and weighing of the evidence. Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133,150. 120 S.Ct. at 2110, 147 L.Ed.2d 105 (2000). In so doing, the Court must disregard all evidence favorable to the moving party that the jury is not required to believe. Reeves. 530 U.S. at 151, 120 S.Ct. At 2110.

Yalobusha County argues (1) it did not "take" the road, because the road already belonged to the County; (2) any taking was for public use; and (3) the

statute of limitations bars the instant suit.

The court declines to decide if Yalobusha County took the road from Fly. Even assuming that the Court took the road, Fly's claim fails. The lawyers in this suit have favored the court with no relevant citations on what constitutes a private taking. In their defense, the court has found few Fifth Circuit authorities on point. The paucity of legal ruminations in these matters should not deter the court from seeking a logical answer to this conflict.

Oft accepted legal treatises, while not binding, are helpful. "The burden on the state to show the existence of a public use to justify a taking is remarkably light, requiring only a showing that the state's exercise of its eminent domain power is rationally related to a conceivable public purpose." 26 AM.JUR. 3d Eminent Dom § 44 (2009) (internal citations omitted). "[C]ourts will not interfere with [takings] unless the use is clearly, plainly, and manifestly of a private character." 29 A C.J.S. Eminent Dom §28 (2009) (internal citations omitted).

Courts have consistently held taking of property "for a public highway, street, or road constitutes a public use." 26 AM.JUR. 3d Eminent Dom § 67 (2009) (internal citations omitted). "The taking of land for highways is not limited to that necessary for actual travel." 29 A. C.J.S. Eminent Dom § 30 (2009) (internal citations omitted). Likewise the construction of telephone lines and cables over land is ordinarily a public use. Brown v. Legal Foundation of Washington, 538 U.S. 216 (2003). Courts have held that running telephone lines is a public use no matter how few

customers are affected. 29 A. C.J.S. Eminent Dom § 35 (2009).

The County has the power to take property for pubic use. A roadway open to the public, and as in this case used for the connection of utilities to multiple residences, obviously constitutes a public use. The roadway is open to all members of the community. It provides access to the property of at least three other property owners. Further, the land encompassed is used to provide utilities to those three landowners. The County has the power to take the land in question. No reasonable trier of fact could find otherwise.

The Court does not address any other defenses raised by Yalobusha County since this analysis disposes of the taking for private use claim. Fly also asks the court to retain jurisdiction of this matter because he has a state law torts claim against the County Attorney. The court declines this request.

Summary Judgment on the private takings claim is appropriate in favor of Yalobusha County. The court dismisses without prejudice any state law claims.

Fly's motion to amend the court's prior order is DENIED.

This the 11th day of June, 2009.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT
COURT NORTHERN DISTRICT
OF MISSISSIPPI

§ 65-7-4. County road systems; official maps; register; hearings; additions, deletions, and changes.

ARCHIVE

Mississippi Statutes
Title 65. HIGHWAYS, BRIDGES AND FERRIES
Chapter 7. Public Roads and Streets; Private Way
Article 1. PUBLIC ROADS AND STREETS GENERAL PROVISIONS

Current through 2009 Legislative Session

§ 65-7-4. County road systems; official maps; register; hearings; additions, deletions, and changes

(1) On or before July 1, 2000, the board of supervisors of each county shall prepare and adopt an official map designating and delineating all public roads on the county road system. Changes to the county road system shall be recorded on this map as soon as is reasonably possible. The map, as it is periodically revised, shall be kept on file in the office of the clerk of the board of supervisors where it shall be available for public inspection.

(2) On or before July 1, 2000, the board of supervisors of each county shall prepare and adopt a county road system register in which shall be entered:

(a) The number and name of each public road on the county road system.

(b) A general reference to the terminal points and course of each such road.

(c) A memorandum of every proceeding in reference to each such road, with the date of such proceeding, and the page and volume of the minute book of the board of supervisors where it is recorded; however, reference to proceedings before July 1, 2000, shall not be required.

(3) Before the initial adoption of the official map and the county road system register, the board of supervisors shall hold a public hearing on the content of the official map and the county road system registry and shall publish notice of the hearing at least one (1) time, not less than two (2) weeks before the date of the hearing, in a newspaper having general circulation in the county.

(4) All subsequent proceedings and changes to the county road system shall be recorded in the county road system register as soon as is reasonably possible. The county road system register, as it is periodically revised, shall be kept on file in the office of the clerk of the board of supervisors where it shall be available for public inspection.

(5) From and after July 1, 2000, the official record of the county road system shall consist of an official map, as provided for in subsection (1) of this section, and the county road system register, as provided for in subsection (2) of this section. The county road system register shall have priority in case of conflict between the register and the official map. The minutes of the board of supervisors containing proceedings with re-

spect to county roads and the county road system shall serve as the official record until such proceedings are recorded on the official map and in the county road system register. The official record of the county road system, at a minimum, shall be revised and updated on or before July 1 of each year.

(6) It is the intention of the Legislature that the initial official record of the county road system prepared and adopted in accordance with this section shall include all public roads that the board of supervisors determines, consistent with fact, as of July 1, 2000, or such date the initial official record is adopted, are laid out and open according to law. From and after July 1, 2000, no road shall be added or deleted from the county road system or otherwise changed except by order or other appropriate action of the board of supervisors and such action shall be recorded in the minutes of the board. All additions, deletions or changes to the county road system shall be recorded in the official record of the county road system as provided for in this section.

Note:

Sources: Laws, 1998, ch. 539, § 1, eff from and after July 1, 1998.

§ 65-7-4.1. Legislative intent.

ARCHIVE

Mississippi Statutes
Title 65. HIGHWAYS, BRIDGES AND FERRIES
Chapter 7. Public Roads and Streets; Private Way
Article 1. PUBLIC ROADS AND STREETS GENERAL PROVISIONS

Current through 2009 Legislative Session

§ 65-7-4.1. Legislative intent

The Legislature of the State of Mississippi finds and determines as a matter of public policy and legislative intent that the proceedings and public hearing required for initial adoption of the official map and county road system register required by Section 65-7-4, Mississippi Code of 1972, are not intended to lay out, open, designate or otherwise establish new public roads, but to document and record existing roads which are, at the time of the initial adoption of said map and register, adjudicated by the board, consistent with fact, to be public roads by dedication, under the methods provided by statute, or by prescription and required by public convenience and necessity.

Note:

Sources: Laws, 2000, ch. 407, § 1, eff from and after passage (approved Apr. 17, 2000.)

§ 65-7-71. Payment for right of way so taken.

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Mississippi Statutes
Title 65. HIGHWAYS, BRIDGES AND FERRIES
Chapter 7. Public Roads and Streets; Private Way
Article 1. PUBLIC ROADS AND STREETS GENERAL PROVISIONS

Current through 2009 Legislative Session

§ 65-7-71. Payment for right of way so taken

Where the board of supervisors of any county uses the right of way or ditch banks or any levee of any drainage district created in this state, it may pay to the treasurer of the respective drainage districts the value of any right of way taken for road purposes, as done with private individuals.

Note:

Sources: Codes, Hemingway's 1921 Supp. § 7259s1; 1930, § 6347; 1942, § 8321; Laws, 1920, ch. 263.

CONSTITUTION OF UNITED STATES

AMENDMENTS

Current through 2010

Amendment V. Rights of Persons

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTION OF UNITED STATES

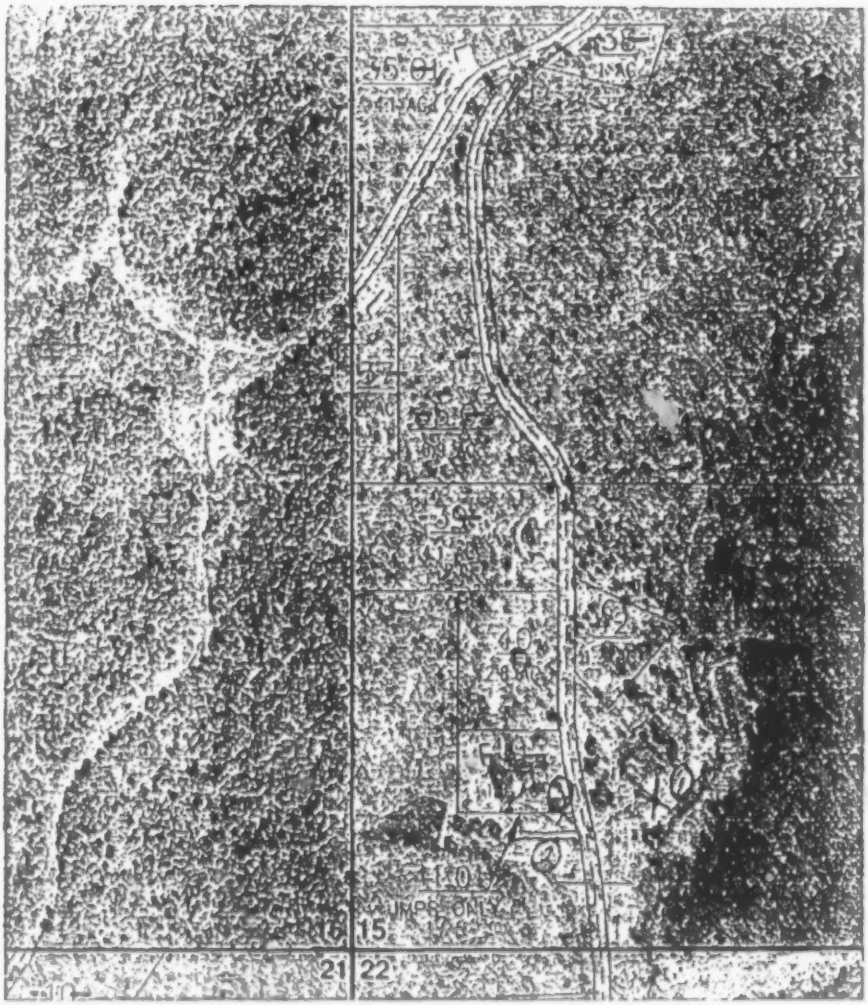
AMENDMENTS

Current through 2010

Amendment XIV. Rights Guaranteed: Privileges and Immunities of Citizenship, Due Process, and Equal Protection

SECTION. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the pro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22